

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the name of “Maritime Communications / Land Mobile LLC” Alleged Debtor-in-Possession:	
<u>Renewal Applications</u> : AMTS Licenses WQGF315, -316, -317, -318 (“Licenses”)	FNs: 0007603776, -777, -778, -779
<u>Extension Requests</u> : to extend/waive the Licenses’ construction/ buildout deadline	FNs: (no Form 601s submitted)
<u>Assignment Applications</u> : to assign the Licenses to Choctaw Holdings, LLC	FN: 0005552500
Proceedings under ECFS	Dockets 11-71 and 13-85
The “Case” defined herein: the above and interdependent proceedings and decisions	Above and other: in ULS, ECFS, FOIA and other proceedings

To: Office of the Secretary
Attn: Chief, Wireless Bureau¹
Filed: On ULS under the Licenses and FNs
And on ECFS under 11-71 and 13-85

APPENDIXES TO
PETITION FOR RECONSIDERATION AND REVIEW
UNDER COMMUNICATIONS ACT §405 AND FCC RULE §1.106,
UNDER §1.41² AND THE PUBLIC INTEREST, AND
UNDER CONSTITUTIONAL DUE PROCESS

Warren Havens, and
Polaris PNT PBC
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June 12, 2017

¹ If any FCC authority deems this to be more properly ruled on by the Commission, then this should be deemed submitted to the Commission. Reasons therefore are indicated herein.

² And under any other rule the FCC deems to apply including §1.115.

APPENDIXES

- App 1. From the Order:
Parts re standing issues (for convenience)
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From the Order, and from Havens Petition, with notes.
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Re: Party legal standing under the standard of the federal APA ¶702 that applies to FCC proceedings, and same under the related Communications Act §402. This standing standard is less stringent than the standard to file and prosecute cases in Article III courts.
- App 4. From *'Havens' 220 Termination Order*, DA DA-12-848, and Order on Reconsideration, DA 14-121.
Re: §1.946 extension criteria, standing issues, etc. Re standing or alternative FCC acceptance: *MCLM* challenger – its challenges were not dismissed for lack of standing or an alternative, and these FCC rulings were made in accord.
- App 5. From *Holland Order* on renewals and certain time extensions, DA 16-469.
Re: §1.946 criteria, standing issues, etc. Re standing or alternative FCC acceptance: the *late* challenger's challenge was still processed under §1.41 and the 'public interest,' and this FCC ruling was made in accord in part.
- App 6. From *Havens AMTS Order on Recon*, DA 12-244.
Re: §1.946 criteria, etc.— here, applicable to *AMTS* license. Dismissal of renewal, and denial of extension request for a license.

Appendix 1

From the Order: Parts re standing issues (for convenience)

For convenience, the following are ¶¶ 8-11 of Order (pp. 4-6) regarding standing.

- The footnote numbers in original are in brackets “[]”.
- Initial text not on standing is placed in grey and smaller font.
- Underlining is added here.
- *Italicized text* in double brackets “[[]]” is added here.
- The same Bureau, in the Declaratory Ruling discussed above, accepted the 3rd Circuit *Havens v MCLM* decision that included: that footnotes cannot be used for substantive parts of a FCC order that has legal affect.
 - o Thus, the Order’s resort to footnotes here do not have legal effect.
 - o But even if those footnote’s text was legally effective, the case law cited supports that Petitioners have standing, not the opposites.

8. *Petition to Deny.* In the Petition to Deny, Havens and Polaris argue primarily that MCLM has failed to demonstrate that it is providing substantial service and that the Renewal Applications should be denied because of MCLM’s alleged disqualifying misconduct.¹ [29] The Petitioners also appear to argue that the Renewal Applications are defective because Choctaw was not made a party to the Renewal Applications, and oppose granting MCLM an extension simply to allow the assignment to Choctaw to go forward. We dismiss the Petition because Havens and Polaris lack standing. The Commission has explained that to establish standing, a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury.² [30] To demonstrate standing, the Petitioners must show a causal link between the claimed injury and the challenged action, and that the claimed injury would be prevented or redressed by the relief requested.³ [31] For purposes of standing, an injury

¹ [29] *See, e.g., id.* at 28-41. The Commission’s statement in the *Choctaw Reconsideration Order* that the *Jefferson Radio* policy is no longer an impediment to the processing of the applications designated in the *HDO* means that the basic qualifications issues raised in the *HDO* cannot serve as the basis for denying any of MCLM’s applications. *See Warren C. Havens et al.*, Order, 32 FCC Rcd 218, 219, para. 4 (WTB MD 2017), *recon. pending*. Accordingly, even if we were to reach the merits of the Petition to Deny, rather than dismissing it for lack of standing, we would not credit the Petitioners’ argument that the Renewal Applications should be denied because of the allegedly disqualifying misconduct of MCLM. *[[The past 2 Orders of the interdependent “3 Orders” defined in this 6-2017 Recon, are pending under challenges by Petitoiners: Standing of Petitioners is under these 3 Orders and the entire “Case” also defined above.]]*

² [30] *See AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465, para. 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*) (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972)); *see also New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002); *TouchTel Corporation*, Order on Reconsideration, 29 FCC Rcd 16249, 16250-51, para. 7 (WTB BD 2014) (*TouchTel*). *[[Higher court controlling case precedents, on down, suppoort Petitioners’ standing.]]*

³ [31] *See Wireless Co.*, 10 FCC Rcd at 13235, para. 7; *TouchTel*, 29 FCC Rcd at 16250-51, para. 7.

must be both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”⁴ [32]

9. At the outset, we reject the Petitioners’ argument that, with Havens having demonstrated standing in other Commission proceedings, “[i]t need not be demonstrated again here.”⁵ [34] That position is plainly incorrect; standing is determined case-by-case on the facts before the Commission. That Havens may have been found to have standing in other proceedings does not eliminate the need for the Petitioners to establish standing in this proceeding.⁶ [35] Moreover, the Petitioners’ offer to provide “[o]ther support for Petitioners’ Standing and Interest ... if needed” is unavailing.⁷ [36] Petitioners, like any party before the agency, are not entitled to file an inadequate pleading and then attempt to remedy its deficiencies later.⁸ [37] We accordingly must determine whether Havens or

⁴ [32] See *Conference Group, LLC v. FCC*, 720 F.3d 957, 962 (D.C. Cir. 2013) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (*Lujan*)). The *Lujan* Court stated that the constitutional minimum of standing requires that the plaintiff must have suffered an “injury in fact,” an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of; the injury has to be fairly traceable to the challenged action of the defendant. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. See *Lujan*, 504 U.S. at 560-61. While license proceedings before the Commission are not Article III proceedings, wireless applications generally have been reviewed using the foregoing Article III standard, and we find no reason to depart from this practice here. See *Airadigm Communications, Inc.*, Order on Reconsideration, 21 FCC Rcd 3893, 3897, para. 14 & n.30 (WTB 2006), *review dismissed*, 26 FCC Rcd 6739 (WTB 2011).

⁵ [34] See Petition to Deny at 47. Indeed, the Commission has not routinely afforded Havens standing as Petitioners suggest. See, e.g., *Maritime Communications/Land Mobile, LLC and Southern California Regional Rail Authority File Applications to Modify License and Assign Spectrum for Positive Train Control Use, and Request Part 80 Waivers*, Order, 31 FCC Rcd 9826, 9830, para. 11 (WTB MD 2016).

⁶ [35] See, e.g., 47 U.S.C. § 309(d)(1) (mandating that every petition to deny an application “shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest ...”); *Cellco Partnership d/b/a Verizon Wireless, Coral Wireless, LLC, and Coral Wireless Licenses, LLC*, Order, 29 FCC Rcd 13397, 13400, para. 8 (WTB MD 2014) (denying standing because petition “fails to assert specific allegations of fact sufficient to show that [the petitioner] is a party-in-interest *with respect to this particular transaction*”) (emphasis added).

⁷ [36] See Petition to Deny at 51.

⁸ [37] The Commission does not “allow a party to ‘sit back and hope that a decision will be in its favor and, when it isn’t, parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.’” *Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154, para. 7 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)); see also *Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002) (“[A] petitioner whose standing is not self-evident should establish its standing by the submission of its arguments and any affidavits or other evidence appurtenant thereto at the first appropriate point in the review proceeding ...”).

Polaris has satisfied the standing requirement in the factual context of this proceeding.

10. We have carefully reviewed the record, and we find that neither Havens nor Polaris has demonstrated standing. The Petitioners do not argue that grant of the Renewal Applications would cause competitive harm of any sort, and neither Havens nor Polaris is a Commission licensee. The only injury articulated by the Petitioners in asserting standing is that MCLM has accused Havens of wrongdoing in matters before the Commission.⁹ [38] Even if such accusations were to be considered a cognizable injury, Havens fails to show how denial of the Renewal Applications would redress such an injury. Standing, moreover, cannot be based on Petitioners' speculation that they might seek the spectrum now covered by the MCLM licenses "in future FCC auctions or other licensing actions."¹⁰

11. Petitioners claim that Polaris has standing based on "an assignment by Havens of some of Havens [sic] claims in the matters of this Petition"¹¹ It follows from our finding that Havens lacks standing that Polaris too lacks standing. We therefore dismiss the Petition.¹²

/ / /

With respect to a petitioner opposing a license application before the Commission, that first appropriate point is in the petition to deny itself, as specified in Section 309(d)(1) of the Act, n.36, *supra*.

⁹ [38] See Petition to Deny at 50.

¹⁰ [39] *Id.* at 51. See, e.g., *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1147 (2013) ("[A]llegations of possible future injury are not sufficient" to establish standing; a "threatened injury" must be "certainly impending") (internal quotation marks omitted); *Chamber of Commerce of U.S. v. EPA*, 642 F.3d 192, 200 (D.C. Cir. 2011) (when alleging future injury, "petitioners must show that there is a substantial . . . probability of injury") (internal quotation marks omitted).

¹¹ [40] See Petition to Deny at 47.

¹² [41] We reject the Petitioners' alternative request that we treat the Petition as an informal request for Commission action under Section 1.41 of the rules, 47 CFR § 1.41. Section 1.41's underlying purpose is to provide "an avenue of recourse to parties who might otherwise have none," and the Commission regularly declines to consider "informal" requests for Commission action under Section 1.41 when there are formal procedures available to the requesting parties. See, e.g., *Warren C. Havens*, Memorandum Opinion and Order, 28 FCC Rcd 16261, 16267-68, para. 18 (2013).

Appendix 2

Standing issues chart:

From the Order, and from Havens Petition, with notes.

Appendix 2: Quotes from the Order Regarding Standing, and the Petition's or Reply's Statements/Showings on Standing, Including Those Not Addressed by the Order.

Note: The Order's footnotes that accompany any of the below quoted language are identified by numbers in brackets, however, their content is omitted below because it is fully contained in Appendix 1 above.

Order ¶ No.	Quote from Order regarding standing	Section of Petitioners' Petition or Reply	Standing Statement or Showing (direct quotes, or reference only or paraphrase at times)	Comments
9	"At the outset, we reject the Petitioners' argument that, with Havens having demonstrated standing in other Commission proceedings, "[i]t need not be demonstrated again here." [34] That position is plainly incorrect; standing is determined case-by-case on the facts before the Commission."	Petition at: ¶2 Petition at footnote 33	"Petitioner Havens has individual Standing and Interest because of reasons the full Commission and Wireless Bureau has determined and stated in formal orders, and licensing decisions, from approximately the year 2000 to this day ³³ . There are components to this but when the Commission and Bureau have determined this, and it was not challenged and became final. It need not be demonstrated again here." "Including the OSC-HDO FCC 11-64 that commenced docket 11-71, that lead to docket 13-85 regarding the MCLM-Choctaw "Second Thursday" and other special relief requests, and in FCC 16-172 granting alleged "Second Thursday" "doctrine" relief (of which Petitioners submitted two petitions for reconsideration that are pending, one referencing intent to submit the instant Petition."	The Petition and Reply explained various reasons why Havens has current standing to file, including for the reasons previously determined by the Commission and Bureau in past orders that deal with the same MCLM geographic licenses, and also for other reasons (as reflected in part in this chart below). At the Petition's footnote 33, Petitioners specifically referred to OSC-HDO FCC 11-64, Docket 11-71, and FCC 16-172. Petitioners' Reply at page 9 referred to footnote 78 of FCC 16-172 that lists Havens individually as a party. In FCC 11-64, FCC 11-71 and FCC 16-172, the FCC found Havens to have standing to challenge MCLM's geographic licenses, which are the same licenses subject of the renewals and extensions being challenged. In fact, the Order, DA 17-450, shows that its decision relates directly to FCC 16-172, which derives from Docket 13-85, and thus, the matters are all inter-related and connected. That is, if a party has standing in one to challenge the MCLM licenses, then the

		Reply at page 9.	<p>“The Commission found that Havens has individual interest and standing in challenging MCLM for over a decade, and stated that in Orders. MCLM attempted, including in 11-71, to suggest otherwise, and lost, and then gave up. Where the Commission has made these determinations, and some were not challenged by MCLM at all, and regarding others MCLM challenged and lost and gave up, MCLM cannot effectively challenge those Commission decisions at this time. That includes footnote 78 in FCC 16-172. The reason the Commission found that Havens has individual party interest and standing is shown in the long complex history of Havens challenging MCLM, and MCLM challenging Havens. These include not only AMTS geographic licensing matters and Auction 57 and Auction 61, but also both Havens’ and MCLM’s site-based AMTS license application matters, which continue to this day.”</p>	<p>party has to have standing in the other ones, because they are all connected. Thus, Petitioners argued that for the same reasons Havens has standing in 13-85, 11-64, 11-71 and FCC 16-172, Petitioners have standing to challenge the renewals and extensions for the Licenses. The Order itself acknowledges it is linked to the Commission’s <i>Second Thursday</i> Order, FCC 16-172, and the related proceeding in Docket 13-85. And, FCC 16-172 dealt with matters in Docket 11-71 and from OSC-HDO, FCC 11-64. See e.g. Order at ¶¶ 7, 18, and 19. Order at ¶19, “Our action here follows on and is fully consistent with the Commission’s conclusions in the Choctaw Reconsideration Order.”</p>
9	<p>“That Havens may have been found to have standing in other proceedings...”</p>	<p>See above-noted sections and quotes of the Petition and Reply: Petition at ¶12, footnote 33 and Reply at page 9.</p>		<p>This is a virtual concession that Havens has been found to have standing in the other proceedings he identified, all of which involve MCLM’s AMTS geographic licenses, and that are connected to the Order, including since the Order itself acknowledges it is linked to the Commission’s <i>Second Thursday</i> Order, FCC 16-172 and the related proceeding in Docket 13-85. And, FCC 16-172 dealt with matters in Docket 11-71 and from OSC-HDO, FCC 11-64. See e.g. Order at ¶¶ 7, 18, and 19. Order at ¶19, “Our action here follows on and is fully consistent with the Commission’s conclusions in the Choctaw Reconsideration Order.”</p>

9	“That Havens may have been found to have standing in other proceedings does not eliminate the need for the Petitioners to establish standing in this proceeding.[35] “	See above-noted sections and quotes of the Petition and Reply: Petition at ¶12, footnote 33 and Reply at page 9, and the comments in column to right above.		
9	Moreover, the Petitioners’ offer to provide “[o]ther support for Petitioners’ Standing and Interest ... if needed” is unavailing.[36] Petitioners, like any party before the agency, are not entitled to file an inadequate pleading and then attempt to remedy its deficiencies later.[37] We accordingly must determine whether Havens or Polaris has satisfied the standing requirement in the factual context of this proceeding.”	See above-noted sections and quotes of the Petition and Reply: Petition at ¶12, footnote 33 and Reply at page 9, and the comments in column to right above.		The Petition and Reply did not simply assert that Petitioners had past standing, but asserted that the past standing still exists. Petitioners also provided other reasons for standing.
10	“The Petitioners do not argue that grant of the Renewal Applications would cause competitive harm of any sort....”			The entire section on standing in the Petition and Reply pertain to both injury and redressability. This includes, <i>but is not limited to</i> , that (i) Havens is majority owner of entities that bid against MCLM and (ii) are the lawful high bidders for MCLM’s AMTS geographic licenses, if Havens challenges to MCLM’s auction application are eventually successful. Pre-receivership entities’ claims to MCLM spectrum have reverted to Havens—see Petition at page 48, Section 9, ¶13.
10	“.... neither Havens nor Polaris is a Commission licensee.”	Reply at page 9.	“In addition, MCLM challenged Havens’ 220-222 MHz licenses, and that matter continues to	The Order did not address standing based upon Havens’ 220-222 MHz licenses that are on

			this day. 220-222 MHz is competitive with AMTS, and the subject Havens 220 MHz licenses cover a major portion of the nation, and a major portion of the MCLM AMTS licenses.”	appeal. MCLM challenged Havens’ 220 licenses and FCC accepted that MCLM challenge, even though MCLM holds no 220 licenses. Havens is appealing those license cancellations.
10	“The only injury articulated by the Petitioners in asserting standing is that MCLM has accused Havens of wrongdoing in matters before the Commission. [38]”	Petition at pages 50-51, Section 9, ¶6. Reply at page 10.	Petition’s text regarding MCLM challenges to Havens and to Havens’ ownership and qualifications affording basis for standing. Also, see Petition’s text that is self-explanatory. “In addition, MCLM has elected to challenge Havens’ individual qualifications to be an FCC licensee or controller, and that is before the FCC, and for that reason alone, MCLM has created for Havens interest and standing to both defend against those charges, and to challenge MCLM as in this Petition, where those charges are demonstrably bogus and undercut MCLM’s own character and fitness to maintain any licenses, and to obtain grant of the subject Applications.”	In addition to what is stated to the left, the entire section on standing in the Petition and Reply also asserted “injury articulated” for other reasons. Some of those are listed below in this chart, and some of those are denoted as not being addressed by the Order. Although MCLM purports to withdraw its challenge of File Nos. 0007605737—739 and 0007605768—569, MCLM’s 5/9/17 filing said that it was maintaining rights to its so-called challenge of Havens’ qualification, and it did not dismiss that challenge with prejudice. Nor did MCLM get Havens’ agreement with withdraw or dismiss that under FCC §1.935 or otherwise. Petitioners do not believe MCLM has complied with that rule for other reason also, and is withholding its actual relations with other parties regarding the purposes of that petition to deny and the so-called withdrawal-dismissal. Havens reserves all rights. Further, MCLM maintains challenges to Havens in its opposition filings regarding appeals of FCC 16-172, DA 17-26, and in pleadings elsewhere, including MCLM’s opposition filings to Havens’ appeals of the Sippel Order, FCC 15M-14, and in MCLM’s position in 11-71 (still waiting a decision by ALJ Sippel).
10	“Even if such accusations were to be considered a cognizable injury....”			This quoted text is a concession that “injury articulated” is a “cognizable injury.”
10	“...Havens fails to show how denial of the Renewal	Petition at Section 9, pages 46-51.	See Petition’s text that is self-explanatory.	The entire section on standing in the Petition and Reply pertain to both injury and

	Applications would redress such an injury.”	Reply at pages 8-10, text under section entitled, “Regarding the Opposition’s section B:”	See Reply’s text that is self-explanatory.	redressability. This includes, <i>but is not limited to</i> , that (i) Havens is majority owner of entities that bid against MCLM and (ii) are the lawful high bidders for MCLM’s AMTS geographic licenses, if Havens challenges to MCLM’s auction application are eventually successful. Pre-receivership entities’ claims to MCLM spectrum have reverted to Havens—see Petition at page 48, Section 9, ¶13.
10	“Standing, moreover, cannot be based on Petitioners’ speculation that they might seek the spectrum now covered by the MCLM licenses ‘in future FCC auctions or other licensing actions.’ [39]”	Petition at page 51, Section 9, ¶7	See Petition’s text that is self-explanatory.	
11	“Petitioners claim that Polaris has standing based on ‘an assignment by Havens of some of Havens [sic] claims in the matters of this Petition’ [40] It follows from our finding that Havens lacks standing that Polaris too lacks standing.”	Petition at page 47, Section 9, ¶1.	See Petition’s text that is self-explanatory.	If Havens has standing, then Polaris has standing.
		Petition at Section 9(i), page 46.	See Petition’s text that is self-explanatory.	Not addressed by Order
		Petition at page 48, Section 9, ¶3.	Petition’s text regarding abandonment of pre-receivership claims to MCLM’s geographic licenses, and reversion to Havens. Also, see Petition’s text that is self-explanatory.	Not addressed by Order
		Petition at pages 48-49, Section 9, ¶4.	Petition’s text regarding Havens’ control of entities’ and their claims in arbitration, which	Not addressed by Order

			involve FCC matters. Also, see Petition’s text that is self-explanatory.	
		<p>Petition at pages 48-49, Section 9, ¶5.</p> <p>Reply at pages 9-10.</p>	<p>Petition’s text regarding Havens ownership in entities that were harmed and injured by MCLM at auction (and their claims), affording standing.</p> <p>“Further, Havens has an assignment for litigation purposes explained in his Ninth Circuit pleading filed before the S. Uecker receivership commenced, in the case of <i>Telesaurus v. Radiolink</i>, which ultimately was submitted to the US Supreme Court. Also, an interest holder in a company that has substantial property interest at stake in a legal action does have interest and standing under the criteria of the <i>Lujan</i> case, even if that person clearly does not have control of that legal entity. However, in the instant case, the California receivership court did order that Havens has control, and not the Receiver, to pursue all claims, and defend against all claims, of the receivership entities that were in controversy, which are within a private arbitration involving Arnold Leong. Those claims and defenses do include the actions of Havens (and now, Havens and Polaris) that are at issue in the subject petition to deny. In that arbitration, the arbitrator has not in any way determined that Havens does not maintain control of the legal entities (which are also subject to the receivership <i>pendente lite</i>) for the course of the arbitration, including for purposes of the type of actions before the FCC to defend these entities and their license rights against bogus claims of MCLM. Unless the arbitrator, at some point, finds that Havens may not maintain that control and pursue</p>	<p>Not addressed by Order</p> <p>Not addressed by Order</p>

			those claims at the FCC, then those rights continue....”	
		Petition at page 51, Section 9.	“Finally, the consideration of the facts in this Petition is warranted in the public interest, because they show serious, ongoing FCC rule violations, fraud and criminal conduct (including under 18 USC 1001) by MCLM for both its AMTS site-based and geographic licenses, that must be addressed by the FCC in order to maintain the integrity of its licensing process.”	Order chose not to address Petition’s and Reply’s facts and arguments in the public interest.
		<p>Reply at page 15 under Section entitled “Other” regarding Appendix 1.</p> <p>Reply (Errata version) at Appendix 1, at pages 21-22, see text in Email from Havens to Scot Stone at FCC (pages 5-6 of email string) starting under section entitled, “Even though item 2 above is sufficient, Havens individually has remaining Standing, Interest, and claims in the MCLM BK case”</p>	<p>“Petitioners also reference and incorporate in full the email text of Mr. Havens in Appendix 1 because the gravamen of it is relevant to the points being made in this reply.”</p> <p>Text that is self-explanatory.</p>	Not addressed by Order

Appendix 3

5 U.S.C. 702, and 47 USC 402(a)-(b):

Re: Party legal standing under the standard of the federal APA ¶702 that applies to FCC proceedings, and same under the related Communications Act §402. This standing standard is less stringent than the standard to file and prosecute cases in Article III courts.

(1) USC Title 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES / PART I - THE AGENCIES GENERALLY / CHAPTER 7 - JUDICIAL REVIEW:

Under: 5 USC §702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

(2) Title 47.

Under: 47 U.S. Code § 402. Judicial review of Commission's orders and decisions

(a) Procedure

Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of title 28.

(b) Right to appeal. Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

(3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is denied by the Commission.

(4) By any applicant for the permit required by section 325 of this title whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.

(5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.

(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), (4), and (9) of this subsection.

(7) By any person upon whom an order to cease and desist has been served under section 312 of this title.

(8) By any radio operator whose license has been suspended by the Commission.

(9) By any applicant for authority to provide interLATA services under section 271 of this title whose application is denied by the Commission.

(10) By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under section 618(a)(3) of this title.

Appendix 4

From ‘*Havens*’ 220 Termination Order, DA DA-12-848, and Order on Reconsideration, DA 14-121. Re: §1.946 extension criteria, standing issues, etc. Re standing or alternative FCC acceptance: *MCLM* challenger – its challenges were not dismissed for lack of standing or an alternative, and these FCC rulings were made in accord.

Re: 1.946(e) applicability, and standing:

The FCC’s “220 MHz Termination Order” (below) shows that extensions of time (to buildout/ construct/ commence “substantial service”) must be granted pursuant to §1.946(e), and that it must be considered “in conjunction with Section 309(j)” that deals with performance requirements, which is Section 80.49(a)(3) for AMTS. Thus, the subject Order here is entirely defective not (and from all appearances, for intentionally not) doing what the Bureau knows it must do by its own precedent - and a precedent where *MCLM* was the challenger to *Havens*.¹⁵ From FCC’s 220 MHz Termination Order at ¶16 (*Order*, DA-12-848, 27 *FCC Rcd* 5841 (2012)) (footnotes inline):

16. Under Section 1.946(e) of the Commission’s rules, an extension of time to complete construction “may be granted if the licensee shows that the failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.”⁷² Section 1.946 also lists specific circumstances where extension requests will not be granted, including delays caused by a failure to obtain financing, because the license undergoes a transfer of control, or because the licensee fails to order equipment in a timely manner.⁷³ The applicable extension standard must be considered in conjunction with Section 309(j) of the Communications Act, as amended, which states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees, and to promote investment and deployment of new technologies and services.⁷⁴

72 See 47 C.F.R. § 1.946(e).

73 See 47 C.F.R. § 1.946(e)(2)-(3).

74 See 47 U.S.C § 309(j)(4)(B).

MCLM challenged *Havens*’ renewals that resulted in this 220 MHz Termination Order.

When *Havens* submitted a petition for reconsideration of the 220 MHz Termination Order,

¹⁵ And where FCC found *MCLM* had standing to challenge *Havens*, for far less compelling facts than *Havens* shows in the instant situation. This 220 MHz Termination Order thus also stands as a precedent that the Order is wrong that *Havens* does not have standing regarding the subject Petition, “3 Orders,” and overall “Case.”

MCLM continued to challenge in an opposition to the Havens petition for reconsideration. In denying Havens petition for reconsideration, the FCC commented upon the MCLM opposition: the FCC upheld its 220 MHz Termination Order on appeal. See e.g. *Order on Reconsideration*, DA 14-121, 29 *FCC Rcd* 1019, which considered and accepted MCLM’s arguments opposing Havens petition for reconsideration when denying Havens’ appeal. See DA 14-121 at ¶17, which shows that the FCC considered MCLM’s challenge’s arguments in upholding termination of Havens’ 220 licenses, “After careful review of the record, including the arguments presented by the Petitioners and Maritime, we hereby deny the relief requested in the Petition for Reconsideration and reaffirm the findings in the Havens 220 MHz Termination Order.”

Thus, the Bureau accepted MCLM had interest and standing to submit that challenge and ruled in accord with the challenge. And where FCC found MCLM had standing to challenge Havens, for far less compelling facts than Havens shows in the instant situation. This 220 MHz Termination Order thus also stands as a precedent that the Order is wrong that Havens does not have standing regarding the subject Petition, “3 Orders,” and overall “Case.”

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Appendix 5

From *Holland Order* on renewals and certain time extensions, DA 16-469. Re: §1.946 criteria, standing issues, etc. Re standing or alternative FCC acceptance: the *late* challenger's challenge was still processed under §1.41 and the 'public interest,' and this FCC ruling was made in accord in part.

Re: §1.41 Requests, and standing

The Bureau does and has considered challenges of renewals and extensions and other licensing applications matters in the past under §1.41, even where the party did not have standing, but where it determined that consideration of the facts and arguments raised were in the public interest. See e.g. *Order and Order on Reconsideration*, DA 16-469, released April 29, 2016, 31 FCC Rcd 3920, at ¶10 and footnotes 30-32, which state (footnotes in-line):

10. We note, however, that MRA could file an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules²⁹ seeking termination of the 31 licenses on the ground that they cancelled automatically for permanent discontinuance of operation.³⁰ There is no time limit on such requests, and they are not subject to standing or other procedural requirements.³¹ We conclude, therefore, that for reasons of administrative efficiency, it is in the public interest for us to consider the merits of MRA's petition.³²

29 47 C.F.R. § 1.41

30 See, e.g., *Warren Havens*, Order, 30 FCC Rcd 4642 (WTB MD 2015).

31 See, e.g., *AT&T and DirecTV*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9146, n.90 (2015); *Warren C. Havens*, Memorandum Opinion and Order, 28 FCC Rcd 16261, 16268, para. 18 & n.60 (2013).

32 See, e.g., *Cheektowaga-Sloan Union Free School District*, Order on Reconsideration, 20 FCC Rcd 1851, 1854, n.29 (WTB PSCID 2005) (citing *Goosetown Enterps., Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12792, 12794-95, para. 7 (2001)); *Frank R. Michalak*, Order on Reconsideration, 19 FCC Rcd 1897, 1897, para. 1 (WTB PSCID 2004) (same). We therefore need not address Holland's other procedural objections to the MRA PFR. See Holland PFR Opposition at 1-5.

In the above proceeding, the challenger, MRA, had no direct interest in the matter and MRA said it desired to get spectrum in future, and the FCC found that MRA was late, but nevertheless the Bureau decided to process MRA's challenge under §1.41, and not dismiss it for lack of standing under Article III or otherwise.

Petitioners showed that consideration of the Petition's and Reply's facts and arguments was very much in the public interest, and show in the Recon that consideration of the Recon is in the public interest under §1.41. There is no reason for the Bureau to grant dissimilar treatment to Petitioners versus other parties to whom it has accepted and considered challenges under §1.41, especially where the consideration of the facts and arguments presented in this proceeding are of similar or more important concern to the public interest, as they were in the proceedings cited above by the Bureau in DA 16-469.

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Appendix 6

From *Havens AMTS Order on Recon*, DA 12-244. Re: §1.946 criteria, etc.— here, applicable to *AMTS* license. Dismissal of renewal, and denial of extension request for a license.

Re: §1.946(e) applicability (to AMTS licenses)

The Bureau itself has made clear that Section 1.946(e) applies to AMTS for purposes of construction, in its past decisions granting or denying extension relief to AMTS licensees. For example, see *Order on Reconsideration*, DA 12-244, released on February 17, 2012, 27 *FCC Rcd* 1702, which denied a petition for reconsideration filed by Havens regarding certain extension request for AMTS licenses under Section 1.946. That DA 12-244 stated at its ¶6 (footnotes omitted):

....The Bureau’s Mobility Division denied the fourth extension request, stating Section 1.946(e) expressly states that “[a]n extension request may be granted if a licensee shows that failure to meet a construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.” Havens’ Extension Request does not meet this standard. We find that the failure to construct was the result of the licensee’s business decision, and therefore was not due to circumstances beyond the licensee’s control.

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